

Introduction

The purpose of this brochure is to provide information concerning the rights of owners of natural gas and surface property in Virginia.

Much has changed over the years in Virginia state law governing these rights. At one time, under the “rule of capture” common law provided no protection for correlative rights, and a mineral owner had no right to complain of trespass or to be compensated for gas drained by another well operator. There was no sharing of business benefits or risks, profits or loss or royalty income.

Changes to the Virginia Gas and Oil Act addressed such inequities under the historical rule of capture by providing for compulsory or forced pooling to maximize the recovery of natural resources and equitable sharing of the resource by establishing units from which gas can be produced.

The Virginia Gas and Oil Act of 1990 provides a comprehensive program to pro-

tect public safety and the environment from risks associated with exploration and development of natural gas and oil resources. The law and regulations govern activities including planning, well site construction and drilling, and the final plugging and reclamation of the well site after the well stops producing. The installation and operation of gathering pipelines are also governed by the Act.

The Department of Mines, Minerals and Energy’s (DMME) Division of Gas and Oil (DGO) is responsible for administering these requirements which govern well permit approval, worker safety and environmental compliance at all oil, natural gas and coalbed methane well sites.

The laws and regulations under the Act encompass a permit review and approval process. All gas well and gas pipeline permits are reviewed by DGO inspectors. Once the applicant has met all requirements, the permit is approved and issued by the DGO division director. The permit review process places special emphasis on water quality protection, erosion and sediment control, and protection of the public from safety hazards associated with gas resource development. The requirements are designed to prevent offsite disturbances.

DMME’s mission is to enhance the development and conservation of energy and mineral resources in a safe and environmentally sound manner, in order to support a more productive economy in Virginia.

Important Gas Ownership Questions

Does my real property encompass Fee Ownership?

Fee ownership would include:

- Surface
- Coal
- Minerals (gas)

Does my ownership encompass gas only?

Is my gas ownership a party in a private lease agreement?

Gas owner rights and options

- A gas owner can come before the Virginia Gas and Oil Board and be designated as a unit operator. As such, the gas owner can develop, produce, transport and sell their gas.
- A gas owner can negotiate private lease terms with a major gas producer.
- Where conflicting claims for gas ownership exist, the owner may be forced pooled and provided election options within a Board order.

Natural Gas & Surface Owner Rights in Virginia



Frequently asked questions about natural gas and surface rights

Who owns the natural gas?

Natural gas may be owned by the person owning the surface property, the minerals, the gas and oil, or the coal. Ownership will be described in the terms of any deeds or leases governing the property.

What are correlative rights and unitization?

Each gas owner who has an interest in a single pool of gas has the right to obtain and produce his share of the gas in the pool without being required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the gas. These rights are known as *correlative rights*.

Unitization refers to the designation by the Virginia Gas and Oil Board* of a given unit on which a gas well can be located and drilled. This process provides for maximum recovery of the gas while protecting the correlative rights of all parties who have been voluntarily or force pooled.

What are field rules?

Field rules designate a common basin or pool of gas or oil to determine how the gas or oil in the field may be produced. Field rules address such things as how far apart wells should be and whether there should be any limits on the rate that gas or oil that can be produced. Field rules result in less waste of resources from drilling too many or too few wells and ruining a pool of gas or oil by producing it too fast. Field rules will affect the spacing between wells and the size of drilling units.

**See the DMME brochure about the role of the*

Virginia Gas and Oil Board for more information.

How are ownership interests affected if a company wants to develop gas or oil on or near my property?

A gas or oil well drains an area around a well, not just the property associated with the well. The interests of people owning the gas or oil in this area must be pooled together to ensure that all of the owners are paid for the gas they own. This area is referred to as a drilling unit. Some people voluntarily agree to pool their gas by selling it or by entering into a lease, joint operating agreement or other contract with the operator of the well and other owners

What if I do not voluntarily agree with the well operator?

One owner cannot keep others from producing their gas or oil around a well by refusing to participate in the drilling unit. If the other owners produced the gas or oil, then the gas or oil under the one owner would be drained and the owner would not receive his or her share of the proceeds from the sale of the gas. To overcome this problem, state law gives the Virginia Gas and Oil Board the right to force pool all owners into a drilling unit.

What if more than one person believes they own coalbed methane gas?

While there have been individual decisions rendered by courts in Virginia and other states, there has not been a common understanding of who owns coalbed methane gas when coal, gas, or minerals have been deeded or leased by the surface owner. When more than one person be-

lieves he or she owns the coalbed methane, these people are referred to as conflicting claimants. Ownership is determined by the terms of the various deeds or leases. Conflicts must be resolved either through a voluntary agreement of the conflicting claimants or by a decision from a court of competent jurisdiction.

If owners cannot voluntarily agree before a coalbed methane well is to be developed, then the well operator petitions the Virginia Gas and Oil Board to allow the well development and to place proceeds from gas sales into an escrow account. The Board distributes the money in the escrow account when the conflicting claimants agree or there is a court order establishing who owns the gas.

Does a well operator have the right to use the surface of the land if the gas is owned by one person and the surface is owned by another?

The right to use the surface is often found in the language of any deed or lease that transferred the rights to produce the gas or oil to a person other than the surface owner. If the terms of a deed or lease do not describe how the surface may be used, then the gas or oil owner has reasonable use of the surface to produce the gas or oil. Some deeds or leases set out payments for or limits on use of the surface. Other deeds give the gas or oil operator full rights to reasonable use of the surface.

The Virginia Gas and Oil Act provides the surface owner with the right to object to a well if:

- he or she believes erosion and sediment controls are not adequate,

- additional measures are needed to protect fresh-water bearing strata,
- the proposed work would constitute a safety hazard, or
- the location would unreasonably infringe on the surface owner's use of the surface.

If the right to produce the gas or oil has been given through a forced pooling order from the Virginia Gas and Oil Board, then the operator does not have the right to use the surface. The operator must reach a voluntary agreement with the surface owner regarding use of the surface to produce the gas or to construct roads, pipelines, or other related facilities.

How is a landowner's property protected under the state law?

The Act provides for domestic water well replacement if the well is contaminated or interrupted by a coalbed methane well operation within 750 feet of the water well. Surface owners' rights are addressed in common law and would be enforced in judicial (court) proceedings rather than through administrative proceedings.

Who should I talk to for more information?

You may wish to contact the well operating company or an attorney specializing in surface and mineral ownership issues. You may also contact the Department of Mines, Minerals and Energy, Division of Gas and Oil at P.O. Box 159, 135 Highland Drive, Lebanon, VA 24266; (276) 415-9650; Fax: (276) 415-9671 or DgoInfo@dmme.virginia.gov with questions concerning the Virginia Gas and Oil Act or the Virginia Gas and Oil Board. Visit our website:

www.dmme.virginia.gov